



# OLR RESEARCH REPORT

January 23, 2012

2012-R-0064

## **SEAT BELT MITIGATION LAWS**

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You asked if Connecticut law allows evidence to be introduced at a civil trial that a person injured in a motor vehicle accident was not wearing a seat belt, thus potentially reducing the amount of damages the injured person might otherwise recover (i.e., seat belt mitigation law). You also wanted to know if other New England states have such a law.

### **SUMMARY**

Neither Connecticut nor any other New England state has such a law. In fact, Connecticut law specifically excludes such evidence in civil actions. The Connecticut Appellate Court upheld the constitutionality of the law in 1995.

According to the National Conference of State Legislatures (NCSL), 15 states do allow reduced damages for seat belt “nonuse.” The laws vary as to scope and applicability.

### **CONNECTICUT LAW**

By law, “failure to wear a seat safety belt shall not be considered as contributory negligence nor shall such failure be admissible evidence in any civil action,” ([CGS § 14-100a \(c\) \(3\)](#)). The legislature adopted this subsection in 1985 (PA 85-429). The Connecticut Appellate Court upheld its constitutionality in 1995 in *Bower v. D’Onfro* (38 Conn. App. 685).

## ***Bower v. D'Onfro***

The plaintiff in *Bower* was a passenger in a car being driven at a high rate of speed in Cheshire when the driver lost control, veered off the road, and hit a tree. The passenger was thrown through an open window onto the highway. The defendant, driving a second car closely behind the first vehicle, also at a high rate of speed, braked suddenly, skidded into the plaintiff and dragged her 68 feet. The trial court found the drivers of both cars jointly liable.

On appeal, the second driver argued that the trial court's failure to allow into evidence the fact that the plaintiff was not wearing a seat belt violated his constitutional rights, including the right to due process.

The second driver claimed he was not liable for the plaintiff's injuries because he did not cause her to be ejected from the first vehicle. The Appellate Court rejected his arguments, finding, among other things, that the argument was "based on [the] assertion that a defendant cannot be held liable for an injury when his conduct does not directly cause the injury. This argument ignores the fact that the legislature can assign statutory responsibility for certain injuries."

"The fact that the defendants claim that the statute would punish people who did not directly cause an injury does not make the statute irrational," the court said. The "strong presumption of legislative validity is overcome only when it plainly appears that the terms of the legislation are not reasonable or that they are not rationally adapted to the promotion of public health, safety, convenience, or welfare."

In this case, the court found, the legislature had "anticipated and addressed" the precise issue raised by the defendant.

"During the legislative debates, the possibility was discussed that a passenger could suffer an injury that he would not have suffered but for the failure to wear a seat belt," the court said. "It was made clear that the seat belt defense could not be raised in such a case."

The court cited Representative Farr's comments during the debate.

"The failure to wear a seat belt would be in no way involved in the issue of causation of the accident," Farr said. "The courts have clearly held that the failure to wear a seat belt doesn't cause the accident...This amendment says...you can never raise that defense."

“Clearly,” the court said, “the legislature has decided not to allow arguments such as the defendants’ to prevent redress for injured plaintiffs.”

## **EXAMPLES OF SEAT BELT MITIGATION LAWS IN OTHER STATES**

Fifteen states allow reduced damages for seat belt “nonuse.” They are Alaska, Arizona, California, Colorado, Florida, Iowa, Michigan, Missouri, Nebraska, New York, North Dakota, Ohio, Oregon, West Virginia, and Wisconsin.

These laws vary in scope and applicability. According to this 2009 on-line [article](#) (by lawyers who defend product manufacturers) several jurisdictions admit evidence of nonuse for limited purposes, such as proof of comparative fault, mitigation of damages, and in some states, claims of defective restraint systems.

### ***Comparative Fault***

In California, while nonuse does not “constitute ‘negligence as a matter of law or negligence *per se*,’” the law [\(Cal. Veh. Code § 27315 \(i\)\)](#) does not “totally ban use of the seatbelt statute as a factor in determining negligence,” the authors write. According to *Housley v. Godinez* (4 Cal. App. 4<sup>th</sup> 737 (1992)), whether a person wore a seat belt is “a factor to be considered by the jury in determining the reasonableness of the conduct in question.”

### ***Damage Reduction***

Some states that allow evidence of seat belt nonuse to mitigate damages limit the amount of mitigation.

For example, Missouri ([Mo. Ann. Stat. § 307.178 \(4\) \(2\)](#)) reduces a plaintiff’s recovery by up to 1% of the damages; Iowa, by up to 5% ([Iowa Code § 321.445 \(4\) \(a\) and \(b\)](#)); and Wisconsin ([Wis. Stat. Ann. § 347.48 \(g\)](#)), by up to 15%. (The Missouri cap applies only when the defendant introduces expert evidence that failing to wear a seat belt contributed to the plaintiff’s injuries.)

New York, on the other hand, “allows seat belt nonuse...into evidence for mitigation of damages if the defendant can demonstrate that the seat belt would have prevented some of the plaintiff’s injuries” but does not set a limit on the amount by which nonuse can reduce recovery, the article states ([N.Y. Veh. & Traf. Law § 1229-c \(8\)](#)).

Colorado allows nonuse evidence only to mitigate pain and suffering damages, but not economic damages ([Co. Rev. Stat. § 42-4-237 \(7\)](#)).

### ***Defective Restraint Systems***

Minnesota is one of several states that allow evidence of nonuse in cases where plaintiffs claim the seat belt was defective in its design, manufacture, installation, or operation ([Minn. Stat. Ann. § 169.685 \(4\) \(b\)](#)).

We have attached copies of the California, Colorado, Iowa, Missouri, and New York laws. Another article on seat belt defense law, written from another point of view, is available at <http://www.selffundingmagazine.com/article/subrogation-and-the-seat-belt-defense-.html>.

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